

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WESTERLY MARINA INC.,

Case No.: 17 Civ. 3153

Plaintiff,

-against-

M/V ACT II, her engines, boilers, etc.,
ANTHONY TROIANO,
CHRISOULA TROIANO and
USALLIANCE FEDERAL CREDIT UNION,

**AFFIRMATION IN SUPPORT
OF MOTION FOR ISSUANCE
OF AN ORDER AND WARRANT
FOR MARITIME ARREST AND
EXIGENT CIRCUMSTANCES**

Defendants.

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LAWRENCE C. GLYNN, an attorney duly admitted to practice law in the State of New York, hereby affirms under the penalty of perjury as follows:

1. I am a member of the firm of Caruso Glynn, LLC, attorney for the plaintiff Westerly Marina Inc. ("Westerly") and am fully familiar with the facts and circumstances of this matter based upon my review of the file maintained by this office.

2. This affirmation is made in support of Westerly's Motion for Issuance of an Order and Warrant for Maritime Arrest.

3. I have read the foregoing Verified Complaint and exhibit(s) annexed thereto and believe the allegations contained therein to be true. Such belief is based upon the undersigned's communications with the plaintiff and the file maintained by this office.

4. Upon information and belief, at and during all the times hereinafter mentioned, defendants ANTHONY TROIANO and CHRISOULA TROIANO (collectively referred to herein as "the Troiano Defendants") were the title holders of the *M/V ACT II*.

5. Upon information and belief, at and during all the times hereinafter mentioned, defendant USALLIANCE FEDERAL CREDIT UNION is the holder of a certain first ship's preferred mortgage for the *M/V ACT II*, and is a real party in interest.

6. The Troiano Defendants have rented dock and drydock space for the *M/V ACT II* at Westerly Marina since October 2013. Annexed hereto as Exhibit A is a true and correct copy of the Hauling and Space Contract signed by the Troiano Defendants.

7. On March 19, 2014, the Troiano Defendants entered into a Dock Rental Agreement with Westerly. A true and correct copy of the Dock Rental Agreement is annexed hereto as Exhibit B.

8. The Troiano Defendants have failed to pay dockage fees and late charges in the amount of \$15,152.23. A copy of their statement of account has been annexed hereto as Exhibit C.

9. Further, the Dock Rental Agreement requires the Troiano Defendants to pay reasonable attorney's fees. Exhibit B, p2.

10. Westerly has provided necessities to the *M/V ACT II* on the order of the owner or a person authorized by the owner of the vessel (46 U.S.C. §31342(a)), *to wit*, providing summer dockage, winter storage, and hauling and launching services since 2013. See Exhibits A and B.

11. Plaintiff believes that the only way to satisfy its maritime lien will be through a judicial sale of the vessel.

12. In light of the foregoing, it is respectfully requested that the Court now issue an Order and Warrant for Maritime Arrest and for such other and further relief as this Court may deem just and proper.

Dated: Little Neck, New York
May 19, 2017

Lawrence C. Glynn
Lawrence C. Glynn



WESTERLY MARINA, INC.
Westerly Road • Ossining, NY 10562
(914) 941-2203
www.WesterlyMarina.com

EXHIBIT A

HAULING AND SPACE CONTRACT

Please reserve space for boat ACT II

Trailer # _____

Length	Beam	Builder	Yr. Built	Inboard/Outboard	NYS#
44/15	Silverton	1999	InBOARD		

OWNER	<u>ANTHONY + CHRISOLLA TROIANO</u>				
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ADDRESS	95 Knolls Cres #7E	CITY	Bronx	ZIP	10463
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TEL. #	914-471-3039	CELL	BOAT TO BE HAULED ON _____		
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Established Yard Rules as stated herein for the performance of reconditioning, repair work, alteration or sale of boats in rented space ashore are agreed herewith:

1. It is mandatory that all bottoms are washed by yard.
2. Trailers and dinghies left after June 1st are charged flat fees. Winter storage charge for dinghies unless left on boat.
3. Owners may do their own work but may not employ any outside professional labor.
4. It is understood and agreed upon that Westerly Marina, Inc. will not be responsible or liable for any damage including bodily injury, property damage caused by fire, theft, etc. to the boat, its gear or equipment whatsoever including any negligence caused by the Marina, its agents, servants and employees.
5. In order to maintain a reasonable storage charge and yard fee, we request that all material, paint, marine hardware, etc. be purchased through the yard.
6. A 10% commission will be charged for all boaters/trailers listed and sold through the yard. A 5% commission will be collected for any boat/trailer sold from these premises. No FOR SALE signs may be posted.
7. WINTER STORAGE PAYMENT WILL BE \$500 UPON SIGNING CONTRACT AND BALANCE DUE ON OR BEFORE OCT. 15th.
8. Any boat left in storage after May 1st, regardless of footage, will pay storage charges per day through October 15th. Minimum charge \$1 per foot per day at the yard's discretion. Work orders must be signed before April 15th.
9. Charges for electricity during Spring Make Ready will be \$10.00 for each boat.
10. All boats will be placed by the yard as they are hauled. In Spring, boat owner will receive notice of launching. Failure to have boat ready will authorize yard to move boat and charge owner for that move.
11. All bottoms will be painted by the yard in the Spring. Owners who wish to prepare their own boats must dispose of all residue in accordance with State regulations.
12. Contract must be signed by owner and returned with deposit before hauling.
13. Work Orders must be signed by owner before work will be started. Estimates will be given on all work except rot.
14. New York State regulations require that you properly dispose of all paint, paint residue, oil and solvents in the prescribed manner.
15. Please fill out contract completely. A blank box is a Yes!
16. As there is a \$50 charge for jump starting/towing boat, we would suggest you leave your keys on the board in the office.

DATE 10/20/13 SIGNED Anthony - Troiano

Accepted: **WESTERLY MARINA, INC.** By _____

WESTERLY MARINA, INC.*A Home For Your Boat*

REPAIRS
SLIP RENTALS
STORAGE

7 WESTERLY ROAD OSSINING, NY 10562
TEL. 914.941.2203 • FAX 914.941.1251
www.WesterlyMarina.com

DOCK RENTAL AGREEMENT**EXHIBIT B**OWNER CHRISOUA & ANTHONY TROIANOADDRESS 25 KAROLLS CRES CITY, STATE & ZIP Bronx NY 10467HOME APT 72 CELL 914-471-3039 WORK _____E:MAIL ACT4522204@gmail.com C.C # _____ EXP.DATE _____MARINE INSURANCE CARRIER BOAT USNAME OF BOAT Act II REG # _____ L.O.A. 45TYPE OF BOAT Closier # OF ELECTRIC LINES 2

- ◆ Season Dock Rate – April 15th – October 15th \$ _____ Per Ft. of Slip or LOA Yards Discretion
- ◆ Deposit Required With Reservation. Balance Due Before April 1st.
- ◆ An Additional Charge Per Day Will Be Made On Boats Left after October 15th
- ◆ Dockside Electricity Is Extra. Pricing On Request, Billed June 1st.
- ◆ Water, Garbage Disposal, (As Permitted By Law) Boat Owner Parking And Rest Rooms, Are Complimentary Services. Pump Out, Ice, Gas, And Diesel Are Available.
- ◆ This Reservation Is Not Binding Until Complete Storage Is Paid And Signed Acceptance Is Returned By The Owner. All Boats Must Have A Valid Registration Number And Name. It Is Further Understood That All Boats Must Have A Full Marine Insurance Policy, (Hull Coverage As Well As Indemnity And Liability) In An Amount Not Less Than \$300,000. Tenant On Behalf Of Himself, His Guests, Invites, Employees, Successors And Assigns, Release And Discharges Landlord From Any And All Responsibility Or Liability.
- ◆ Any Granting Of Dockage Or Facilities Hereunder Is With The Distinct Understanding And The Applicant Further Agrees, The Westerly Marina Inc. Assumes No Responsibility Whatsoever For The Safety Of Any Vessel Or Vessels Docked In The Boat Basin And Will Not Be Liable For Fire, Theft, Or Damage To Said Vessel, Its Equipment Or Property In Or On Said Vessel.
- ◆ The Applicant Further Agrees That He And His Guests Will Abide By All Fleet Rules And Property Rules Made By WESTERLY MARINA INC. Management For The Safety, Convenience And Pleasure Of All Boat Owners. A Copy Of The Rules Will Be Given With Your Contract.
- ◆ The Applicant Must Fully Realize That The Facilities Of WESTERLY MARINA INC. Are Designed And Built For Convenient All Weather Operation And Berthing Of Boats. Boat Owners Will Bear In Mind And Make Clear To Their Guests That Every Person Using Dock And Walkways Must Exercise Caution And Common Sense. Guests May Use Marina Facilities Only When Accompanied By A Member. Applicant Agrees When Signing That He Or She Is Fully Responsible For The Safety And Behavior Of Said Guests.
- ◆ WESTERLY MARINA INC. Reserves The Right To Forfeit The Applications Reservations For Violation Of Fleet Or Property Rules Or Misconduct.
- ◆ Transferring Or Subletting Of Slips Is Not Permitted. Slip Is To Be Used Solely By The Applicant. No Commercial Use Allowed.
- ◆ All Payments For Slip Rental And Or Mooring Fees Are Final And Not Refundable.
- ◆ Management Reserves The Right To Use Dock Space During Owners Absence. Boat Owners Must Notify WESTERLY MARINA INC. On Leaving And Returning.

- ◆ Applicant Shall Deliver To WESTERLY MARINA INC. The Combination And Or Duplicate Keys Required To Access And Operate Said Vessel. WESTERLY MARINA Or Its Agents Are Permitted To Access Said Vessel If It Is Determined That A Fire Or Safety Issue Is Present And Or In An Emergency Situation. In An Emergency Situation, WESTERLY MARINA INC. May, But Shall Not Be Obligated, To Move Applicants Vessel To A Different Location In the Marina If In Sole Discretion Of WESTERLY MARINA INC. Such A Move Is Warranted By Prudent Seamanship For The Protection Of The Permitted Vessel, Other Vessels Or The Marina.
- ◆ Any And All Vessels In The Slip are Required To Comply With All U.S.C.G. Regulations For Recreational Boats.
- ◆ Dropping Anchor In Marina Is Prohibited Except In An Emergency.
- ◆ Boats In Need Of Pumping Will Be Pumped In An Emergency At Managements Discretion And Owner Will Be Billed Accordingly.
- ◆ Any Condition Aboard Or Around A Boat Declared A Fire Hazard Will Be Removed Immediately By Management.
- ◆ Worn Or Inadequate Dock Lines Will Be Replaced And Charged To Owner.
- ◆ No For Sale Signs Are Permitted Without Approval Of The Management.
- ◆ Tires Are Not Permitted As Fenders.
- ◆ Runways And Boardwalks Around Slips Must Be Kept Clear At all Times. Supplies, Dinghies, Etc., Must Not Be Left There. Small Tenders And Rowboats are Permitted Only In Designated Areas.
- ◆ All Storage Charges And Or Repair Charges Must Be Paid Before Launching.
- ◆ Speed Limit In Basin And Parking Lot Must not Exceed 5 miles Per Hour.
- ◆ Service Float Is To Be Used Only For Launching, Discharging Of Passengers, Sale Of Gasoline, Diesel, Supplies, And Materials. Dinghy Must Not Be Left There.
 - ◆ Note: It Is Understood By Boat Owners Of The WESTERLY MARINA INC, That One Of Activities Of Said Marina Will Be "YACHT BROKERAGE". It Is Expected That Those Desirous Of Selling Their Boats Will Avail Themselves Of This Service. A 10% Yacht Brokerage Fee Will Be Charged.
 - ◆ It Is Further Expected That If A Boat Is Listed With Other Brokers And Said Brokers use The Facilities Of WESTERLY MARINA INC. For Consummation Of A Sale, Said Brokers Co-broke With This Brokerage. A 5% commission Will Be Charged For All Boats Sold From Premises.
 - ◆ In Order To Maintain Reasonable Rental Fees, We Request That all Paint, Material, And Marine Hardware Be Purchased Through The Yard. Owners May Do Their Own Work, (Except Bottom Painting And Shrink Wrapping), On Their Boats But May Not Hire Any Outside Contractors Without The Permission Of The Management All Outside Contractors Must First Register In Office And Supply A Certificate Of Insurance.
 - ◆ WESTERLY MARINA INC. Shall Have A Statutory Maritime Lien (State And Federal) Upon Permitted Vessel, Its Motor, And Other Attached Equipment, To Secure The Payment Of Any And All Services And Materials Supplied To Applicant By WESTERLY MARINA During The term Of The Lease And Amounts Due And Owing WESTERLY MARINA INC. Pursuant To This Agreement, Applicant Agrees To Reimburse WESTERLY MARINA, INC. For Reasonable Attorney Fees, Disbursements And Costs Relating To A Suit Or Other Collection Efforts By WESTERLY MARINA INC. Against Applicant To Collect Any Amounts Due Under This Agreement, Including Any amounts Due And Secured By The Liens Described In This Paragraph.

DATE 03/19/14

SIGNED



DATE _____

SIGNED _____

WESTERLY MARINA, INC.

Westerly Marina Inc.
 7 Westerly Road
 Ossining, N.Y. 10562
 914-941-2203

Statement

Date

4/28/2017

Bill To

ANTHONY TROIANO
 25 KNOLLS CRES # 7E
 BRONX, NY 10463

EXHIBIT C

			Amount Due	Amount Enc.
			\$15,152.23	
Date	Description	Amount	Balance	
06/01/2015	INV #I102095. Due 06/01/2015. Orig. Amount \$3,758.13.	1,185.36	1,185.36	
07/01/2015	INV #FC 21652. Due 07/01/2015. Orig. Amount \$348.65. Finance Charge	348.65	1,534.01	
08/03/2015	INV #FC 21742. Due 08/03/2015. Orig. Amount \$293.48. Finance Charge	293.48	1,827.49	
09/01/2015	INV #FC 21822. Due 09/01/2015. Orig. Amount \$250.77. Finance Charge	250.77	2,078.26	
09/30/2015	INV #FC 21897. Due 09/30/2015. Orig. Amount \$254.97. Finance Charge	254.97	2,333.23	
10/17/2015	INV #I102878. Due 10/17/2015. Orig. Amount \$2,255.95.	2,255.95	4,589.18	
11/01/2015	INV #FC 21947. Due 11/01/2015. Orig. Amount \$273.54. Finance Charge	273.54	4,862.72	
12/01/2015	INV #FC 22018. Due 12/01/2015. Orig. Amount \$282.41. Finance Charge	282.41	5,145.13	
02/01/2016	INV #FC 22100. Due 02/01/2016. Orig. Amount \$585.38. Finance Charge	585.38	5,730.51	
03/01/2016	INV #FC 22169. Due 03/01/2016. Orig. Amount \$273.82. Finance Charge	273.82	6,004.33	
Current	1-30 Days Past Due	31-60 Days Past Due	61-90 Days Past Due	Over 90 Days Past Due
0.00	242.66	204.16	429.44	14,275.97
				\$15,152.23

FINANCE CHGS.ON OVER DUE
 BALANCE 1.5 % PER MONTH

Westerly Marina Inc.
 7 Westerly Road
 Ossining, N.Y. 10562
 914-941-2203

Statement

Date

4/28/2017

Bill To

ANTHONY TROIANO
 25 KNOLLS CRES # 7E
 BRONX, NY 10463

		Amount Due	Amount Enc.		
		\$15,152.23			
Date	Description	Amount	Balance		
04/01/2016	INV #FC 22220. Due 04/01/2016. Orig. Amount \$305.83. Finance Charge	305.83	6,310.16		
05/01/2016	INV #FC 22269. Due 05/01/2016. Orig. Amount \$295.95. Finance Charge	295.95	6,606.11		
05/31/2016	INV #I103580. Due 05/31/2016. Orig. Amount \$3,758.13.	3,758.13	10,364.24		
05/31/2016	INV #FC 22321. Due 05/31/2016. Orig. Amount \$300.47. Finance Charge	300.47	10,664.71		
07/01/2016	INV #FC 22375. Due 07/01/2016. Orig. Amount \$377.07. Finance Charge	377.07	11,041.78		
08/02/2016	INV #FC 22433. Due 08/02/2016. Orig. Amount \$205.82. Finance Charge	205.82	11,247.60		
09/01/2016	INV #FC 22486. Due 09/01/2016. Orig. Amount \$192.96. Finance Charge	192.96	11,440.56		
10/01/2016	INV #FC 22576. Due 10/01/2016. Orig. Amount \$196.01. Finance Charge	196.01	11,636.57		
10/18/2016	INV #I104153. Due 10/18/2016. Orig. Amount \$2,255.95.	2,255.95	13,892.52		
11/01/2016	INV #FC 22628. Due 11/01/2016. Orig. Amount \$177.90. Finance Charge	177.90	14,070.42		
Current	1-30 Days Past Due	31-60 Days Past Due	61-90 Days Past Due	Over 90 Days Past Due	Amount Due
0.00	242.66	204.16	429.44	14,275.97	\$15,152.23

FINANCE CHGS.ON OVER DUE
 BALANCE 1.5 % PER MONTH

Westerly Marina Inc.
 7 Westerly Road
 Ossining, N.Y. 10562
 914-941-2203

Statement

Date

4/28/2017

Bill To

ANTHONY TROIANO
 25 KNOLLS CRES # 7E
 BRONX, NY 10463

Amount Due	Amount Enc.
\$15,152.23	

Date	Description	Amount	Balance
12/01/2016	INV #FC 22669. Due 12/01/2016. Orig. Amount \$205.55. Finance Charge	205.55	14,275.97
01/31/2017	INV #FC 22739. Due 01/31/2017. Orig. Amount \$429.44. Finance Charge	429.44	14,705.41
03/01/2017	INV #FC 22798. Due 03/01/2017. Orig. Amount \$204.16. Finance Charge	204.16	14,909.57
04/03/2017	INV #FC 22849. Due 04/03/2017. Orig. Amount \$242.66. Finance Charge	242.66	15,152.23
Current	1-30 Days Past Due	31-60 Days Past Due	61-90 Days Past Due
0.00	242.66	204.16	429.44
			Over 90 Days Past Due
			14,275.97
			Amount Due
			\$15,152.23

FINANCE CHGS.ON OVER DUE
 BALANCE 1.5 % PER MONTH